MINUTE ITEM
This Calendar Item No C82 was approved as Minute Item No. 82 by the California State Lands Commission by a vote of 3 to 0 at its 8-19-03 meeting.

CALENDAR ITEM
C82

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08/19/03
AD 465 W 23889
D. Plummer
B. Stevenson
D. Canzoneri

APPROVAL OF A COMPROMISE TITLE SETTLEMENT AGREEMENT CONCERNING APPROXIMATELY 39 ACRES OF LAND IN THE CITY OF PETALUMA, SONOMA COUNTY

APPLICANTS:

Petaluma Riverfront, LLC
c/o Vin Smith
Basin Street Properties
1318 Redwood Way, Suite 140
Petaluma, CA 94954

This calendar item deals with the settlement of title issues in an approximately 39 acre piece of land on the bank of the present-day Petaluma River in the city of Petaluma. The property, referred to as the "Subject Parcel," is shown for reference purposes in Exhibit A. Exhibit A is attached to this calendar item and incorporated by reference as a part of it. The proposed settlement of this private-State title dispute in the Subject Parcel is by means of a land exchange and a contribution to the Kapiloff Land Bank Fund. The private party is Petaluma Riverfront, LLC, which purchased the record interest in the Subject Parcel in 2001.

The staff of the Commission has researched the title history of the Subject Parcel and plans and actions in the last century to straighten some of the major bends which existed historically in the Petaluma River. The research has shown that:

1. The Petaluma River at the site of the Subject Parcel is a navigable and tidal river which passed to California at statehood as sovereign property;

2. Before the Petaluma River was straightened, one large bend in the River wound through the Subject Parcel. This bend was not sold to a private party through a state program related to former river bends in other parts of Petaluma;

3. Private base title within the Subject Parcel derives from two sources: Tidelands Survey #20 ("TLS 20") and Swamp and Overflowed Survey #13 ("S&O 13"). Neither of these sources of private title included lands within the historic Petaluma River. None of the Subject Parcel lies within the Rancho Petaluma, which begins upland of this property. As to S&O 13, the United States Bureau of Land Management has denied a listing of the parcel as swamp and overflowed lands, and has concluded that it was tidelands which passed to the State at statehood; and

4. All or a part of the Subject Parcel remains subject to public trust title interests either in fee or a public trust easement.

The existence, nature, and extent of remaining sovereign interests in the Subject Parcel is disputed by Petaluma Riverfront, LLC. Were this matter litigated, it is anticipated that Petaluma Riverfront would make several arguments, among them the following. The arguments are listed here to show the nature of the dispute. This does not mean that the State Lands Commission agrees with them, nor with the assertions of underlying facts in support of them. It is likely that Petaluma Riverfront would assert, among other arguments, that:

1. Petaluma Riverfront is the good faith purchaser in the chain of title of S&O 13 and TLS 20, and that these lands were validly patented by the State of California into private hands more than a century ago under legal State-approved land disposition programs;

2. The lands within both S&O 13 nor TLS 20 were above mean high tide in their natural condition, and could be and were sold by the State of California without any retained State title interest, never having been subject to the public trust;

3. The bend in the Petaluma River was straightened more than a century ago through a program supported by the State and federal governments to enhance navigation to the main docks of the town. This program was implemented at substantial expense, and benefited the people of the State and the public trust interest in shipping; and

4. Any assertion of state title in the Subject Parcel at this date is barred by laches and estoppel, particularly given that the State supported relocation of the Petaluma River.

The staff and Petaluma Riverfront, LLC have negotiated a settlement of sovereign title interests within the Subject Parcel. The settlement has been memorialized in a draft settlement agreement now on file in the office of the Commission in Sacramento. Through the settlement, the Subject Parcel will be divided into five parcels named as follows. Each parcel is shown for reference on Exhibit A to this calendar item:

- The "Trust Termination Parcel," which comprises the majority of the property. The Trust Termination Parcel lies inland of the current Petaluma River, and will be in the ownership of Petaluma Riverfront, LLC. It is to be freed from public trust title interests, whether actual or asserted by the State, through implementation of the settlement agreement. It is anticipated that the Trust Termination Parcel will be developed for mixed uses including office space and housing;

- The "Public Use & Construction Easement Parcel." This parcel is a riverfront strip which varies in width along its length, and extends an average of 113 feet inland from the current top of bank of the Petaluma River. Through the settlement, the State Lands Commission will receive an easement in this parcel for public recreational uses of various types: among them sitting, picnicking, walking and biking, and for constructing and maintaining public improvements of various types.

- The "Public Access Easement Parcel" is an access route for use of the general public to have access between the nearest public road and the Public Use and Construction Easement Parcel along the Petaluma River. This access may be relocated at a later time to an as-built location of roads bisecting the Subject Parcel, so long as the relocation is of equal utility to the public compared to the Public Access Easement Parcel.

- The "Public Trust Easement Parcel" is a parcel along the bank of the River. It will extend from the waterward side of the Public Use & Construction Easement to the mean high tide line of the River. Through

the settlement, the State Lands Commission will have a public trust easement in this parcel.

- The "Public Trust Parcel" lies waterward of the "Public Trust Easement Parcel," and extends to the centerline of the Petaluma River. Petaluma Riverfront, LLC will quitclaim any interest it may have in this parcel to the State Lands Commission. This will serve to clear out any private interest in the present channel of the River.

The staff has completed its review of an appraisal of the Subject Parcel and has evaluated the evidence relating to the title history of the property. The sum of the values of land and interests in land to be settled in the State, when compared to the value of the Trust Termination Parcel, requires a contribution to the Kapiloff Land Bank Fund as a part of this settlement so that the finding of equal or greater economic value can be made. Staff's analysis, with participation from the Office of the Attorney General, has indicated that $296,000 is an acceptable amount for this contribution given the economic values of the Subject Parcel and the title and legal issues involved in this property. This contribution will serve for the acquisition of other property useful for public trust purposes.

The staff recommends this settlement on the terms set forth in the settlement agreement now on file at the Commission's Sacramento office. The settlement will protect public trust uses and ownership along the shoreline of the Petaluma River, which will serve as an important part of the access plans of the city of Petaluma. It will avoid potential costly litigation of uncertain results, and will produce proceeds for the benefit of the Kapiloff Land Bank Fund.

STATUTORY AND OTHER REFERENCES:

A. Public Resources Code: Div. 6, Parts 1 and 2; Div. 13.

B. California Administrative Code: Title 2, Div.3; Title 14, Div. 6.

PERMIT STREAMLINING ACT DEADLINE:
N/A

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, Section 15061), the staff has determined that this activity is exempt from the requirements of CEQA as a statutorily-exempt project because involves settlements of title and boundary problems.

   Authority: Public Resources Code section: 21080.11.

EXHIBITS:

A. Location Map of the Subject Parcel Showing Approximate Location of Settlement Parcels.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 AS A STATUTORILY EXEMPT PROJECT PURSUANT TO PUBLIC RESOURCES CODE SECTION 21081.11, SETTLEMENT OF TITLE AND BOUNDARY PROBLEMS.

2. AUTHORIZE THE EXECUTIVE OFFICER OR HIS DESIGNEE TO EXECUTE THE PROPOSED TITLE SETTLEMENT AGREEMENT IN A FORM SUBSTANTIALLY SIMILAR TO THAT NOW ON FILE IN THE OFFICES OF THE STATE LANDS COMMISSION, INCLUDING THE FINDINGS TO TAKE EFFECT UPON RECORDING OF THE AGREEMENT WHICH WILL RESULT IN A TERMINATION OF SOVEREIGN RIGHTS IN THE TRUST TERMINATION PARCEL.

3. FIND, EFFECTIVE UPON RECORDATION OF THE PROPOSED SETTLEMENT, THAT:

   A. THE AGREEMENT IS IN THE BEST INTERESTS OF THE STATE FOR THE IMPROVEMENT OF NAVIGATION; THE ENHANCEMENT OF THE CONFIGURATION OF THE SHORELINE FOR THE IMPROVEMENT OF THE WATER AND THE UPLAND; AND THE PROTECTION,

PRESERVATION, AND ENHANCEMENT OF THE TIDELANDS AND SUBMERGED LANDS AND PUBLIC ACCESS THERETO;

B. THE AMOUNT OF FUNDS ($296,000) TO BE DEPOSITED INTO THE KAPILOFF LAND BANK FUND THROUGH THE AGREEMENT, TOGETHER WITH LAND OR INTERESTS IN LAND TO BE SECURED IN THE STATE, IS OF A VALUE EQUAL TO OR GREATER THAN THE VALUE OF SOVEREIGN INTERESTS IN THE TRUST TERMINATION PARCEL;

C. THE TRUST TERMINATION PARCEL HAS BEEN IMPROVED, RECLAIMED, AND FILLED; HAS BEEN EXCLUDED FROM THE PUBLIC CHANNELS; AND IS NO LONGER AVAILABLE OR USEFUL OR SUSCEPTIBLE OF BEING USED FOR NAVIGATION AND FISHING AND IS NO LONGER TIDE OR SUBMERGED LANDS IN FACT;

D. THE PARTIES HAVE A GOOD FAITH AND BONA FIDE DISPUTE AS TO THEIR RESPECTIVE INTERESTS WITHIN THE PARCEL IN WHICH THE PUBLIC TRUST IS TO BE TERMINATED;

E. THE AGREEMENT CONSTITUTES A COMPROMISE OF CONTESTED ISSUES OF LAW AND EVIDENCE UPON WHICH THE DISPUTE IS BASED;

F. THE AGREEMENT IS ENTERED IN LIEU OF THE COSTS, DELAYS, AND UNCERTAINTIES OF LITIGATION AND IS CONSISTENT WITH AND IS AUTHORIZED BY LAW; AND

G. THE TRUST TERMINATION PARCEL IS NO LONGER NECESSARY OR USEFUL FOR THE PURPOSES OF THE PUBLIC TRUST AND THE PUBLIC TRUST IS TERMINATED IN IT.

4. APPROVE RECORDATION IN SONOMA COUNTY ON BEHALF OF THE COMMISSION OF THE FOLLOWING DOCUMENTS:

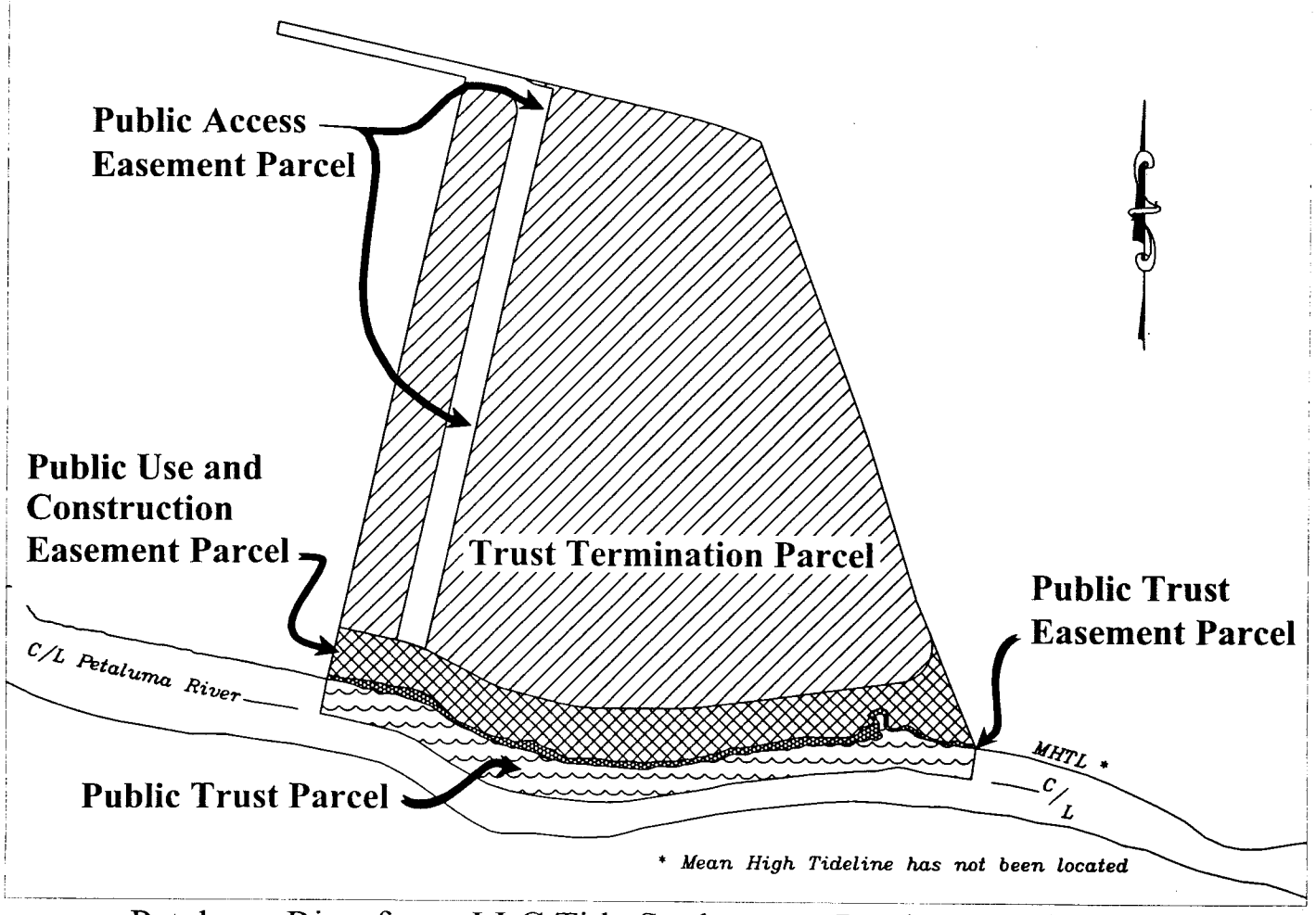
A. THE TITLE SETTLEMENT AGREEMENT IN SUBSTANTIALLY THE FORM OF SUCH AGREEMENT ON FILE IN THE OFFICES OF THE COMMISSION.

B. DEEDS TO IMPLEMENT THE TERMS OF THE TITLE SETTLEMENT AGREEMENT.

5. AUTHORIZE AND DIRECT THE STAFF OF THE STATE LANDS COMMISSION AND/OR THE CALIFORNIA ATTORNEY GENERAL TO TAKE ALL NECESSARY OR APPROPRIATE ACTION ON BEHALF OF THE STATE LANDS COMMISSION, INCLUDING THE EXECUTION, ACKNOWLEDGMENT, ACCEPTANCE, AND RECORDATION OF ALL DOCUMENTS AS MAY BE NECESSARY OR CONVENIENT TO CARRY OUT THE COMPROMISE TITLE SETTLEMENT AGREEMENT; AND TO APPEAR ON BEHALF OF THE COMMISSION IN ANY LEGAL PROCEEDINGS RELATING TO THE SUBJECT MATTER OF THE AGREEMENT.

NO SCALE

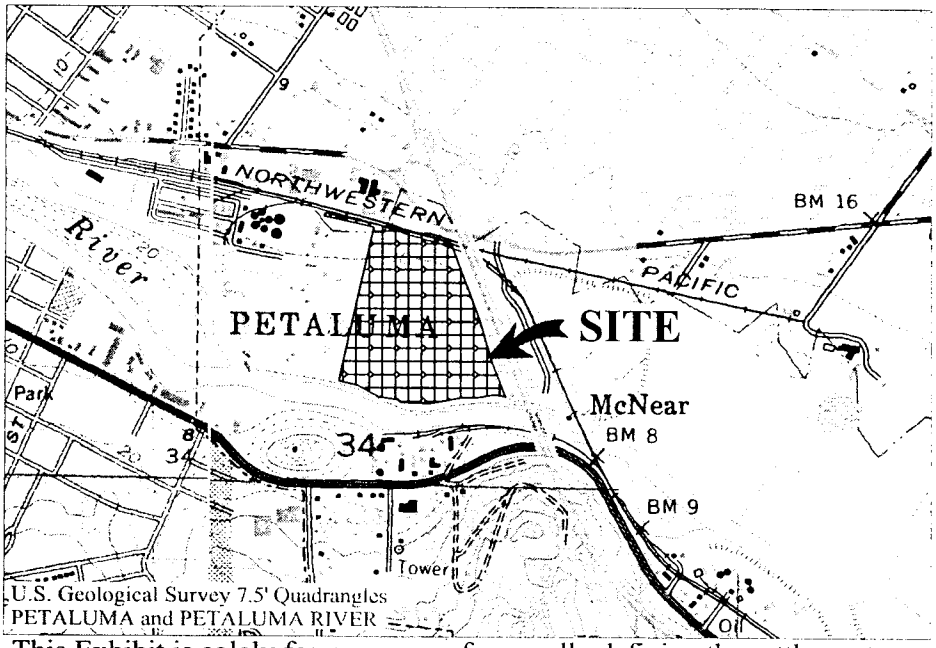
SITE MAP



Petaluma Riverfront, LLC Title Settlement, Petaluma, California

NO SCALE

LOCATION MAP



This Exhibit is solely for purposes of generally defining the settlement area, and is not intended to be, nor shall it be construed as a waiver or limitation of any state interest in the subject or any other property.

EXHIBIT A
W23889

APN 136-010-21 (por)

Petaluma Riverfront, LLC
Title Settlement
Sonoma County

DWC 07-30-03

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